SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 484

ANTHONY JOSEPH,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion Below

No opinion has been reported and petitioner has been advised that none will be written in this matter. The judgment of the District Court was ordered affirmed (R. 52).

II

Jurisdiction

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, section 347).

III

Statement of the Case

A full statement of the case has been given under the heading "A" of the Petition (pp. 1-5 herein), and is incorporated here by reference.

IV

Specification of Errors

1. Error of the District Court in denying petitioner's motion to be relieved of those portions of the stipulation entered into prior to the trial, and without his understanding, which contained admissions that the product, which he was charged to have shipped into interstate commerce, was a food, within the meaning of the Pure Food, Drug, and Cosmetic Act, when in fact the product was not a food.

2. Error of the District Court in denying this petitioner's motion for a new trial, for the same reasons.

3. Error of the Circuit Court in affirming the actions of the District Court, as set forth in 1 and 2 above.

V

Question Presented

The sole question presented is whether or not a defendant in a criminal action can be convicted of a crime, where the only evidence of the corpus-delicti of the crime charged, was established by a stipulation entered into by the defendant's attorney, with the attorneys for the prosecution; the defendant's attorney who entered into the stipulation having been discharged before the trial and other attorneys substituted.

VI

Statutory Provisions Involved

The only statute involved is the Act of Congress of June 25, 1938, known as the Federal Food, Drug, and Cosmetic Act (52 Statutes at Large 1040; 21 U. S. C. 331 (a)), which makes it unlawful to introduce into interstate commerce a food which has been adulterated by consisting of in part a filthy substance.

VII

Summary of Argument

It is the petitioner's position that the prosecution must prove the corpus-delicti of the crime, which we believe is the proposition that the product shipped was a food, by other evidence than the admission of the defendant, made by a stipulation, which was the only evidence offered to prove this fact.

VIII

Argument

We believe the Court, the U. S. Attorneys and ourselves are agreed on the well-established rule that the corpus-delicti of a crime cannot be established by the defendant's admissions and confessions. *Ryan* v. *U. S.*, 99 Fed. (2) 864; *Pines* v. *U. S.*, 123 Fed. (2) 829, and *Anderson* v. *U. S.*, 124 Fed. (2) 58, and many other cases all adhere to this rule, and require other evidence to establish the corpus-delicti, than just the admissions or confessions of the defendant.

These cases were cited to the District Court and also to the Circuit Court; the District Court held that Stipulations were not confessions or admissions, and the Circuit Court, by their affirmance of the District Court's ruling, have held to the same effect.

There are no cases which we have been able to find where this point has been determined.

In *Benz* v. *Celeste Fur Corp.*, 136 Fed. (2) 845 at 848, the Court says in effect that a stipulation cannot serve to dispense with proof needed to bring the plaintiffs within the doctrine of the cases they cite.

In *Swift & Co.* v. *Hocking Valley R. Co.*, 243 U. S. 281, Justice Brandeis treated a stipulation used in that case as a nullity, when it was used as an agreement concerning the legal effect of admitted facts, giving as his reason that the Court cannot be controlled by agreement of counsel on a subsidiary question of law. And further that an agreed set of facts cannot be stipulated to for the purpose of reviewing the judgment below.

IX

Conclusion

It is therefore submitted that this case is one in which this Honorable Court should determine the legal effect of a stipulation entered into before the trial, wherein the corpus-delicti of the crime charged was agreed upon, and the defendant convicted on this evidence alone; and that a stipulation should be governed by the same rules as confessions or admissions in criminal cases; that to such an end a writ of certiorari should be granted, and that this Court should review the judgment of the Circuit Court of Appeals for the Ninth Circuit and finally reverse it.

Respectfully submitted,

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September 16, 1944.